Maynard v. *Fellows*, *supra*, it is said: 'Where the form of the note, or the manner of signing it, are such as to render it necessary, in order to conform the allegations to the proof, to refer to the firm or partnership, it is necessary in some form to describe the note as a partnership note. But, where there is nothing in the form of the instrument to render this necessary, a partnership note may be declared on in the same form as any other joint note; and, unless the rights of other partnership creditors should he involved, it is immaterial whether the note is one of a partnership, or merely a joint note.'

"The present suit is in *assumpsit* for goods sold and delivered by plaintiffs to defendants prior to the 26th day of April, 1893, and the pleas, by not denying, admit the fact alleged. Under the allegation of a sale and delivery of goods prior to April 26, 1893, defendants would be jointly liable for same, whether a partnership really existed subsequent to that time or not. All that the pleas do allege is that no partnership in fact existed between the defendants on and subsequent to the 26th of April, 1893; and this, it seems to us, presents an immaterial issue as to plaintiffs' right of recovery on the cause of action set out in the declaration."

In *Courson* v. *Parker* (W. Va.), 20 S. E. 583, it is held that the allegation of a partnership between the defendants is, in general, merely for the purpose of identification and need not be proven, provided, of course, a joint liability on the defendants is otherwise established. See further, 17 Am. & Eng. Enc. Law, 912, 918; Mechem on Partnership, 223.

In Virginia, by statute, where plaintiffs or defendants sue or are sued as partners, and their names are set forth in the declaration or bill, it is not necessary to prove the partnership, unless the same be denied on affidavit. (Va. Code, sec. 3280.) Even under this statute, a plea, properly verified, denying a partnership between the defendants, would be clearly an insufficient answer to the claim, unless supported by another plea denying defendants' joint liability other than as partners.

The effect of the statute is not to provide that where traversed on affidavit the partnership shall be proved, but that unless so traversed, it shall be taken as proved. So that it would seem that this statute has not affected the common law rule, asserted in the Florida case above cited, that in an action on a contractual liability against a firm, there need be no allegation of the partnership, or, if made, it need not be proved, if a joint liability can otherwise be established.

MUNICIPAL CORPORATIONS—ORDINANCE REQUIRING ABUTTER TO REMOVE SNOW FROM SIDEWALK.—In *State* v. *Jackman*, 41 Atl. 347, the Supreme Court of New Hampshire holds that a municipal ordinance requiring abutting lot owners to remove snow from the sidewalk adjoining their premises, though expressly authorized by the city charter, is unconstitutional, as laying an unequal burden on lot owners, as taking private property for public use without compensation, and as a denial of the equal protection of the laws. The opinion, by Blodgett, J., is a strong one, and the case will probably become a leading one on that side of the question.

Says the court: [The abutting lot owner] "having contributed his proportional share of the public expense of keeping the highway in a suitable condition for the public travel, we are not aware of any constitutional principle upon which more

can be lawfully exacted of him. Nor should there be. A property owner has no other or greater right in or to or control over that part of the public street in front of his property than any other part of the highways of the town. All the streets of a municipality are equally free to the general public, who at all times are entitled to the free and unobstructed use of every foot of them. 2 Dill. Mun. Corp. (3d Ed.), secs. 659, 683. It is true that the fee of the street may be, and generally is, in the adjoining lot owner; but this can be of no consequence, because the easement over it is in the public. This being so, it is plain that the lot owner has no other interest in the street, as such, than any other citizen of the municipality. 'The same is true of the sidewalk. It is a part of the street set apart for the exclusive use of persons travelling on foot, and is as much under the control of the municipal government as the street itself. The owner of the adjacent lot is under no more obligation to keep the sidewalk free from obstructions than he is the street in front of his premises. He may not himself obstruct either so as to impede travel on foot or in carriages. It will be conceded the citizen is not bound to keep the street in front of his premises free from snow or anything else that might impede travel. Then, upon what principle can he be fined for not removing snow or other obstruction from the sidewalk, in which he has no interest other than what he has in common with all other persons resident in the city? It is certainly not upon the principle under which assessments are made against the owner for building sidewalks in front of his property. The cases are not analogous. Such assessments are maintained on the ground the sidewalk enhances the value of the property, and, to the extent of the special benefits conferred, they are held to be valid.' *Gridley* v. *City of Bloominton*, 88 Ill. 554, 556, 557; *City of Chicago* v. *O'Brien*, 111 Ill. 532. And, certainly, he cannot be so fined upon any principle of taxation which obtains in this jurisdiction; for 'the unconstitutionality of unequal taxation is too plainly declared by our Constitution, and too well settled by reported decisions made during the last fifty-three years to be debatable.' *Boston, C. & M. R. R.* v. *State*, 60 N. H. 87, 94. And, 'under the Constitution, . . . there is no warrant for the imposition of any other tax than one assessed upon a proportional and equal valuation of all the different kinds of property on which it is to be levied': *State* v. *United States & C. Exp. Co.*, *Id.* 219, 246; and no more can he be upon any principle of division of the public expense, for 'the unconstitutionality of an unequal division of public expense among New Hampshire taxpayers has been settled too long, and by too many decisions, to be a subject of debate or doubt.' *Id.* 246, per Doe, C. J.

"True, the ordinance is not strictly a law levying a tax, the direct or principal object of which is the raising of revenue: *In re Goddard, Petitioner*, 16 Pick. 504; but it is such a law practically, both in substance and in effect, and should fairly be so regarded. The amount of expense from which the city is relieved by the operation of the ordinance is equivalent to so much revenue derived from taxation. The additional burden to which the lot owners are subjected is none the less a tax because it is exacted in labor, and not in money: Pub. St., ch. 73, sec. 8, before cited; Cooley, Tax'n, 12; and the fine imposed for its non-performance is as useful to the city as a tax of equal amount. 'Courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter

upon the inquiry whether the legislature has transcended the limits of its authority.' *Mugler* v. *Kansas*, 123 U. S. 623; 8 Sup. Ct. 273. . . .

"But it makes no difference, so far as the decision of this case is concerned, whether the ordinance is or is not regarded as a law levying a tax. It undeniably imposes a duty and operates as a law creating a burden which does not bear upon all citizens alike, and which makes an unequal division of public expense among taxpayers, in direct violation of the principle of equality which pervades the entire Constitution, and to which all other purposes are incidental and subordinate. *State* v. *Pennoyer*, 65 N. H. 113, 114; 18 Atl. 878. And not only is the ordinance a palpable violation of the equality of privilege and of burden guaranteed by the Constitution, but it is the taking of private property for public use, without just compensation, and a denial to the persons upon whom it operates of the equal protection of the laws, within the meaning of the fourteenth amendment of the Federal Constitution, providing that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. See *Smyth* v. *Ames*, 18 Sup. Ct. 418, 424, 425. . .

"It would seem unnecessary to go further; but the ordinance stands no better on the ground that it is an exercise of the police power inherent in all municipal and State governments, and which, it may be conceded, properly extends to 'the protection of the public morals, the public health, and the public safety.' *Boston Beer Co.* v. *Massachusetts*, 97 U. S. 25, 33; *Mugler* v. *Kansas*, *supra*. Nobody doubts that, when an occasion for its exercise exists, the police power may be invoked in behalf of these objects. But it is entirely plain that the ordinance has no real or substantial relation to any of them. It is not an exercise of restraining or protective power, like the 'Dog Law,' so called, or the statute empowering towns to require buildings to be provided with such ladders and buckets as may be necessary for use in case of fire, under a penalty of six dollars for every three months' neglect, and other enactments of like character, cited by the State. It is simply an unequal division, for economy and convenience only, of public expense and public burden among a class of taxpayers who have not only once contributed and borne their full share agreeably to their constitutional duty, but who are again required to make contribution, not proportionately and according to the valuation of their property or the benefits they receive, but disproportionately, and solely according to the length of the street lines of their respective lots. This is extortion and inequality, pure and simple; and it is nothing else. See *Curry* v. *Spencer*, 61 N. H. 624, 631, 632. . . .

"A purely public burden cannot be laid upon a few individuals, as here attempted, by an ordinance or by any other enactment; nor can public expense be apportioned among them arbitrarily, disproportionably, and without regard to the value of their property; nor can they be subjected to double taxation, in whatever form it may be disguised, or be held responsible for the action of the elements, which they could not control, and to the production of which they did not even theoretically contribute. It is true, nevertheless, that in several of the States all these things are held to be right and proper as a legitimate exercise of the police power: *In re Goddard, Petitioner*, 16 Pick. 504; *Village of Carthage* v. *Frederick*, 122 N. Y. 268; 25 N. E. 480; or the power to remove nuisances. *Mayor, etc.* v. *Mayberry*, 6 Humph. 368. But even the police power, comprehensive as it admittedly is, has its limitations; and in this State, at least, it is subordinate to the

equality of privilege and of burden secured by the bill of rights and guaranteed by the Constitution, in clearly-expressed provisions, which mean just what they declare. And in the proposition that, in the exercise of a power to remove nuisances, a private individual may be compelled to remove an obstruction to travel which he did not create, from premises over which he has no control, and which it is the statutory duty of the municipality to keep free from obstruction, we fail to discover any merit except that of novelty. . . .

"If one public burden may be shifted from the public, and cast upon a certain class of property owners, upon considerations of economy or convenience or peculiar interest, actual or supposed, others may, and doubtless will, be,—for 'it is a familiar fact that the corporate conscience is ever inferior to the individual conscience; that a body of men will commit as a joint act that which every individual of them would shrink from did he feel personally responsible,' but it cannot be done in this jurisdiction until the constitutional reservations and guaranties intended 'as a protection of the subject against the government, and of the weak subject against the powerful subject,' are regarded as 'glittering generalities' merely, and the reported decisions of three generations of courts are reversed. That time may come, but it has not yet arrived."